

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff Investment
Securities LLC and the estate of Bernard L.
Madoff,

Plaintiff,

v.

CITIBANK, N.A., CITIBANK NORTH
AMERICA, INC. and CITIGROUP GLOBAL
MARKETS LIMITED,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-05345 (SMB)

**STIPULATION AND ORDER CONCERNING DEFENDANTS' MOTION TO
DISMISS AND THE TRUSTEE'S MOTION FOR LEAVE TO AMEND**

Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff (the "Trustee") and Defendants Citibank, N.A. and Citicorp North America, Inc.¹ (collectively, the "Defendants"), by and through their respective undersigned counsel, (collectively, the "Parties"), agree as follows:

WHEREAS, on July 26, 2011, Defendants filed a Motion to Dismiss this adversary proceeding ("Motion to Dismiss") (ECF Nos. 19, 20 and 21);

¹ The Trustee's complaint, dated December 8, 2010, names as a defendant "Citibank North America, Inc.," an entity that does not exist.

WHEREAS, the Trustee and Defendants subsequently entered into a number of stipulations to extend: (i) the time by which the Trustee may respond to the Motion to Dismiss, (ii) the time by which Defendants shall file any reply, and (iii) the return date for the Motion to Dismiss (*e.g.*, ECF No. 117).

WHEREAS, on August 28, 2014, the Trustee filed an Omnibus Motion Seeking Leave to Replead Pursuant to Fed. R. Civ. P. 15(a) and Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) (the “Trustee’s Omnibus Motion”) (ECF Nos. 71, 72 and 73). The Trustee’s Omnibus Motion sought, among other things, limited discovery relevant to good faith under either 11 U.S.C. § 548(c) or 11 U.S.C. § 550(b) (the “Limited Discovery Issue”) from the Defendants, as well as leave to file amended complaints against the defendants (the “Leave to Replead Issue”);

WHEREAS, on June 18, 2018, the Court denied the branch of the Trustee’s Motion as to the Limited Discovery Issue (ECF No. 143), and acknowledged that the parties thereto agreed that further briefing and proceedings on the Leave to Replead Issue would be deferred until after the Court entered a decision on the Limited Discovery Issue;

WHEREAS, pursuant to the operative Stipulation and Order Extending Time to Respond, which deferred further briefing and proceedings on the Motion to Dismiss until after the Court rendered a decision on the Trustee’s Omnibus Motion on the Leave to Replead Issue (ECF No. 120), the Parties are now required to address the issues surrounding the Leave to Replead Issue and the Motion to Dismiss;

WHEREAS, the Trustee intends to file a motion for leave to file an amended complaint;²

² It is the Trustee’s position that he has a right to amend the Complaint in this adversary proceeding as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1), a position with which Defendants disagree – Defendants’ position is that the Trustee’s right to amend the Complaint in this adversary proceeding as a matter of course expired 21 days after Defendants filed their motion to dismiss on July 26, 2011. *See* Fed. R. Civ. P. 15(a)(1)(A). Without conceding he

WHEREAS, the Parties have agreed that further briefing and proceedings on the Motion to Dismiss shall be deferred until after the Court enters a decision on the Trustee's motion for leave to file an amended complaint, which, if granted, could render the Motion to Dismiss moot; and

WHEREAS, the Parties have agreed to a schedule for litigation of the Trustee's motion to amend his complaint.

IT IS HEREBY STIPULATED AND AGREED that:

1. The Trustee shall file his motion for leave to file an amended complaint on or before December 14, 2018, and Defendants shall file their opposition on or before March 12, 2019. The Trustee shall file a reply, if any, on or before May 7, 2019.
2. The extension of time granted by this stipulation (the "Stipulation") is without prejudice to any future extensions of time.
3. Except as expressly set forth herein, the Parties reserve all rights and defenses they may have, and entry into this Stipulation shall not impair or otherwise affect such rights and defenses, including without limitation any defenses based on lack of jurisdiction.

does not have a right to amend the Complaint as a matter of course, the Trustee will move for leave to file an amended complaint. Defendants reserve all rights and defenses as to any claim asserted by the Trustee that he has the right to amend the Complaint in this adversary proceeding as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1).

4. This Stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic, or electronic copy of this Stipulation shall be deemed an original.

Dated: November 21, 2018
New York, New York

/s/ Seanna R. Brown
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*Attorneys for Defendants Citibank, N.A., and Citicorp
North America, Inc.*

SO ORDERED: November 21, 2018

/s/ STUART M. BERNSTEIN

**Hon. Stuart M. Bernstein
United States Bankruptcy Judge**